



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Timothy E. Nauman, Esq.
Fay Sharpe Fagan Minnich & McKee LLP
7th Floor
1100 Superior Avenue
Cleveland OH 44114-2516

COPY MAILED

JAN 14 2008

OFFICE OF PETITIONS

In re Application of	:	
SCHLAGHECK et al.	:	
Application No. 09/648,140	:	DECISION ON PETITION
Filed: 08/25/2000	:	
Attorney Docket No. CLW-2-0132	:	

This is in response to the Communication filed September 15, 2004, which is being treated as a Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.181. The petition was recently received in the Office of Petitions for a decision on the merits. The undersigned immediately reviewed the petition upon receipt and rendered the following decision. The Office sincerely apologizes for any inconvenience.

On June 4, 2002, the Office mailed a Notice of Allowance and Fee(s) Due, which set a three-month statutory period for to pay the issue fee. In the absence of a timely and proper response, the application became abandoned on September 5, 2002. On October 16, 2002, the Office mailed a Notice of Abandonment.

Petitioners asserted that they filed a timely and proper response to the Notice of Allowance in the form of a Request for Continued Examination (RCE) (and fee) and an Information Disclosure Statement (IDS).¹ In support of the assertion, petitioners submitted a copy of a returned, date-stamped postcard receipt, acknowledging receipt of the RCE and a check in the amount of \$740.00 in the USPTO on July 8, 2002. Copies of these documents accompany this petition.

The Office has not located the original RCE in the Image File Wrapper. Nevertheless, section 503 of the MPEP states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the RCE was filed timely in the USPTO on July 8, 2002, but was not matched with the application file.

For the reasons stated above, the petition under 37 CFR 1.181 is **GRANTED** and the holding of abandonment is hereby withdrawn.

¹ Receipt of the IDS on June 11, 2002, and July 25, 2002, and the \$740.00 fee on July 8, 2002, by the USPTO is not in dispute.

This matter is being referred to Technology Center Art Unit 2859 for further processing of the RCE submitted on July 8, 2002, and resubmitted on September 15, 2004, as well as the previously filed submission under 37 CFR 1.114.

Telephone inquiries concerning the status of the application or the examination process should be directed to the Technology Center. Telephone inquiries specifically concerning this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Conferee: Anthony Knight, Supervisor